



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/779,095

02/08/2001

Jean-Louis Gueret

08048.0032-00000

1674

22852

7590

01/06/2010

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

EXAMINER

GHALL, ISIS A D

ART UNIT

PAPER NUMBER

1611

MAIL DATE

DELIVERY MODE

01/06/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/779,095	Applicant(s) GUERET, JEAN-LOUIS	
	Examiner Isis A. Ghali	Art Unit 1611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1.5-30 and 35-68 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1.5-30 and 35-68 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The receipt is acknowledged of applicant's request for RCE and full document of CA 2186042, both filed 10/28/2009.

Claims 2-4, 31-34 have been canceled.

Claims 1, 5-30, 35-68 are pending and included in the prosecution.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/28/2009 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 1611

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 6, 10, 11, 15-30, 45-59, 65-68 are rejected under 35 U.S.C. 102(b) as being anticipated by Sternfield et al. (US 2,665,528).

Sternfield disclosed cleansing tissue comprising from top down: non-woven fabric perforated non-woven layer (10), adhesive layer impregnated with active agent (12), adhesive layer impregnated with active agent (16), non-woven perforated layer (18). The above structure can be continued to form plurality of laminated structure. Non-woven fabric is inherently non-adhesive. Cleansing agent includes fungicides, cleansing agent, and abrasives. The layers are laminated, and not disclosed to be separated from each other, therefore, the adhesive used is permanent adhesive. Upon use the tissue is wetted, it slowly releases the active agent. Abrasive materials read on inert substance claimed by claim 10. Layer (10) has high mechanical strength, i.e. different from layer (18), reads on claim 17. The adhesive layers read on impermeable layer claimed by claim 18. The tissue may adhere to the surface to be cleaned, reads on claim 47. See col.1, lines 1-5, 27-55; col.2, lines 20-55; col.4, lines 46-75; col.5, lines 10-117; col.6, lines 1-5; figure 6.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 1611

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 5, 7-9, 14, 35-44 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sternfield (US 2,665,528) in view with Smith (US 6,491,928).

The teachings of Sternfield are discussed above.

Although Sternfield desired to clean surfaces by delivering active agent from the tissue when wetted, however, the reference does not explicitly teach wetting with water as instantly claimed by claims 5 and 60, and the absorbent materials in the middle layer as claimed by claim 7-9, 35-44. Sternfield does not teach the specific adhesives as claimed by claim 14.

Smith teaches an article comprising first substrate and second substrate and a therapeutic composition disposed in between the two substrates (abstract; figure 3). The first substrate is perforated and made of permeable materials to enable passage of water to release the active agent and activates the cleansing agent when the article get wet (col.3, lines 50-66). The second substrate is can be apertures (co1.9, lines 35-40). The substrates layers are made of non-woven material and can be permeable to water,

Art Unit: 1611

as required by claims 15 and 16, or impermeable, as required by claim 18 (col.3, lines 64-67; col.4, lines 13-16; col.5, lines 23-25). The two non- adhesive substrates can have different texture, as required by claim 17 (col.3, lines 39- 46). The therapeutic composition comprises cellulose or starches that are claimed by applicant as moisture absorbing compounds in Claims 7 and 9 (col.36, lines 9-11; col. 37, lines 1-2). The reference also teaches gelling agents that also read on moisture absorbing agents and it is present in an amount of 0.1 to 100% that encompasses the amounts claimed in claims 8 and 42 (col.36, lines 18-25). The gelling agents are capable to form a hydrogel and absorb water, and that reads on the limitations of claims 36-41. The therapeutic composition comprises polyamides claimed by applicants as inert materials in claim 10 (col.43, line 59).

Therefore, It would have been obvious to one of ordinary skill in the art at the time of the invention to provide an article comprising two outer non-woven layers and an inner adhesive layer containing active agent as taught by Sternfield , and use water for wetting the article and further add moisture absorbent materials to the adhesive layers as taught by Smith. One would have been motivated to do so because Sternfield desired to absorb moisture in order to release the active agent from the middle layer(s) and because Smith teaches water activates the cleansing agent and further teaches absorbent particles in the middle layer to achieve water absorption and release of the active agents. One would reasonably expect formulating an article comprising two outer non-woven layer wherein at least one of the outer layers is permeable and inner

Art Unit: 1611

adhesive layer containing active agent and absorbent materials, wherein the article absorbs water and effectively releases the active agent.

Regarding the specific adhesives claimed by claim 14, Sternfield teaches permanent adhesive, and applicant failed to show unexpected results obtained from the specific adhesives claimed by claim 14. Therefore, the adhesives claimed by claim 14 do not impart patentability to the claims, absent evidence to the contrary.

Absent any evidence to the contrary, and based upon the teachings of the prior art, there would have been a reasonable expectation of success in practicing the instantly claimed invention. Therefore, the invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made.

7. Claims 12, 13, 61-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sternfield in view of JP 04108710 ('710).

The teachings of Sternfield are discussed above.

However, the reference does not teach magnetizable particles in the therapeutic composition as claimed by claims 12, 13, 61-64.

JP '710 teaches cosmetic in adhesive matrix comprising magnetizable particles that are capable of promoting of blood flow to the skin without causing inflammation to the skin (abstract).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide an article comprising two non-adhesive layers and a middle layer disposed in between the non-adhesive layers and comprises adhesive

material and therapeutic agent as taught by the Sternfield, and add magnetizable particles to the active agent containing layer as taught by JP '710. One would have been motivated to do so because JP '710 teaches that the magnetizable particles are capable of promoting the blood flow to the skin without causing its inflammation. One would reasonably expect formulating an article comprising two outer layers and middle adhesive layer comprising magnetizable particles that promotes the blood flow to the skin without causing its inflammation.

Response to Arguments

8. Applicant's arguments with respect to claim1, 5-30 and 35-68 have been considered but are moot in view of the new ground(s) of rejection.
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isis A. Ghali whose telephone number is (571) 272-0595. The examiner can normally be reached on Monday-Thursday, 6:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached on (571) 272-0614. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

Art Unit: 1611

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Isis A Ghali/
Primary Examiner, Art Unit 1611

IG